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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,453	11/20/2003	Todd E. Tesch	DP-310230	9826
22851	7590	01/20/2006	EXAMINER	
DELPHI TECHNOLOGIES, INC.			GOODEN JR, BARRY J	
M/C 480-410-202			ART UNIT	
PO BOX 5052			PAPER NUMBER	
TROY, MI 48007			3616	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,453

Applicant(s)

TESCH ET AL.

Examiner

Barry J. Gooden Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/20/03 & 5/16/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to a side airbag device, classified in class 280, subclass 730.2.
 - II. Claims 9-19, drawn to a method for folding an inflatable cushion, classified in class 493, subclass 449.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions side airbag device and method for folding an inflatable cushion are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process which does not require creating a plurality of folds back towards a first fold.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Scott McBain on January 5, 2006 a provisional election was made without traverse to prosecute the invention of a method for folding an inflatable cushion, claims 9-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-8 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipate by Asano et al., US Patent 6,371,512 B1.

In regards to claims 9-14, Asano et al. clearly show a method for folding an inflatable cushion (See Figures 18 and 19) of a side airbag device comprising:

a securement end (35) of said inflatable cushion (316) provided;

a first fold (325B) created at a first position away from said securement end (35), said first fold (325B) and said securement end (35) defining one side (left side) of the folded inflatable cushion (316);

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a traversing portion (from 325B to 327) of said inflatable cushion (316) positioned away from said first fold (325B), said traversing portion (from 325B to 327) defining another side (top side) of the folded inflatable cushion (316);

a plurality of folds (327A) created from said traversing portion back towards said first fold (325B);

an end portion (327B) of said inflatable cushion (316) positioned about said plurality of folds (327A), said end portion (327B) defining another two sides (bottom and right sides) of the folded inflatable cushion (316), wherein said end portion (327B) is the first portion of said inflatable cushion to deploy (See Figure 19) when the inflatable cushion (316) is inflated;

wherein said securement end (35) has a plurality of securement features for facilitating the securement of said inflatable cushion (316);

wherein said side air bag device (316) is installed in a vehicle having a roof rail (28) and a headliner (40), wherein said inflatable cushion (316) is folded to be received within an area defined by the roof rail (28) and the headliner (40) (See figures 18 and 19);

wherein said end portion (327B) is configured to be adjacent to the headliner (40) (See figures 18 and 19); and

wherein said traversing portion (325B to 327) is configured to be adjacent to the roof rail (28) (See figure 18).

5. Claims 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanase et al., US Publication 2001/0,006,287.

In regards to claims 16-19, Tanase et al. show (Figure 9) an inflatable cushion of a side airbag device (M1), comprising:

a securement end (10a and above) of said inflatable cushion (10) provided;

a traversing portion (10e) of said inflatable cushion (10) positioned away from said securement end (10a), said traversing portion (10e) defining a side (the top) of the folded inflatable cushion (10);

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a plurality of folds (Each section of material extending from the left (the end of the traversing portion (10e) to the right (the end of the securement portion) created from said traversing portion (10e) back towards said securement end (10a);

an end portion (10b) of said inflatable cushion (10) positioned about said plurality of folds, said end portion (10b) defining two sides (the left and bottom) of the folded inflatable cushion (10), wherein said end portion (10b) is the first portion of said inflatable cushion (10) to deploy when the inflatable cushion is inflated (See Figure 10A);

wherein said securement end (10a) has a plurality (See Figure 1) of securement features (29,36) for facilitating the securement of said inflatable cushion (10);

wherein said side air bag device (M1) is installed in a vehicle (See Figure 1)) having a roof rail (2(1)) and a headliner (7), wherein said inflatable cushion (10) is folded to be received within an area defined by the roof rail (2(1)) and the headliner (7) and said end portion (10b) is configured to be adjacent to the headliner (See Figure 9); and

wherein said traversing portion (10e) is configured to be adjacent to the roof rail (2(1)) (See Figure 9). It is noted that adjacent is defined as close or nearby (Webster's II New Riverside Dictionary, Revised Edition).

6. As both Tanase et al. and Asano et al. disclose the structures as claimed they inherently disclose the method for folding to arrive at the disclosed final structures.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asano et al. in view of Tanabe et al., US Patent 6,460,877.

In regards to claim 15, Asano et al. disclose all of the claimed elements excluding the inflatable cushion being folded by a machine. Tanabe et al. teach of an inflatable cushion (10) being folded by a machine (Column 10, lines 10-20).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the side impact airbag of Asano et al. in view of the teachings of Tanabe et al. to include being folded by a machine so as to provide a more efficient and reproducible resultant structure.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry J. Gooden Jr. whose telephone number is (571) 272-5135. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BJG

Barry J Gooden Jr.
Examiner
Art Unit 3616



DAVID R. DUNN
PRIMARY EXAMINER